

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
MAY 26 2004

Michael N. Milby, Clerk of Court

<u>In re ENRON CORPORATION</u>	§
<u>SECURITIES, DERIVATIVE</u>	§
<u>& "ERISA" LITIGATION</u>	§
 	§
MARK NEWBY, ET AL.,	§
 	§
<i>Plaintiffs,</i>	§
 	§
v.	§
 	§
ENRON CORPORATION, ET AL.,	§
 	§
<i>Defendants.</i>	§
 	§

MDL 1446
and Consolidated, Related
and Coordinated Cases

Civil Action no: H-01-3624
and Consolidated, Related Cases
and Coordinated Cases

**ENRON DIRECTOR AND OFFICER DEFENDANTS' PARTIAL JOINDER OF LEAD
PLAINTIFF'S OPPOSITION TO THE MOTION
FOR MODIFICATION OF THE SCHEDULING ORDER (DE 2147)**

Enron Director and Officer Defendants Robert A. Belfer, Norman P. Blake, Jr., Ronnie Chan, John H. Duncan, Joe H. Foy, Wendy L. Gramm, Robert K. Jaedicke, Charles A. LeMaistre, John Mendelsohn, Jerome Meyer, Frank Savage, Charls E. Walker, John Wakeham, Herbert Winokur, Jr., John A. Urquhart, Rebecca Mark-Jusbasche, Paulo V. Ferraz Pereria, Bruce G. Willison, Richard B. Buy, Mark A. Frevert, Stanley C. Horton, Steven J. Kean, Mark E. Koenig, Jeffrey McMahon, Cindy K. Olson, Lawrence Greg Whalley, Kenneth L. Lay, Jeffrey K. Skilling, Lou L. Pai, Joseph W. Sutton, and Ken L. Harrison (collectively "D&O Defendants") file this Opposition to the Motion for Modification of the Scheduling Order ("Motion"). Having previously obtained with the plaintiffs and the other defendants a five-month delay in the commencement of fact depositions, the Bank

2167

Defendants now seek an additional three-month postponement. There is no adequate justification for further delay.

Lead Plaintiff filed its opposition to the Banks' Motion. D&O Defendants support and join Lead Plaintiff's objection to the proposed postponement. For reasons stated in Lead Plaintiff's opposition, the Bank Defendants' justifications for further delay are unpersuasive. In particular, the Bank Defendants' representation that postponement is warranted because the "Enron insiders" are producing millions of pages of Enron documents received from the government in related criminal proceedings overstates the potential burden. The core of Enron's production was the documents that it produced to the government. The government is now producing documents that it amassed, largely from the same sources. It stands to reason that the Enron documents the government produces in criminal proceedings would be largely duplicative of Enron's production in the civil case.¹

Although the D&O Defendants join Lead Plaintiff's opposition, they do not support Lead Plaintiff's alternate remedy that would permit the three-month delay in starting the depositions, yet not provide for an additional three months at the end of the schedule to complete the depositions. As described in detail to this Court on January 22, 2004, the Deposition Protocol, which governs the deposition process, was carefully negotiated. Every term was discussed at length, including, but not limited to, the number of depositions, the lengths of the depositions, the number of tracks, and the time frame during which all such activity should take place. Everyone compromised their positions to reach this unsteady agreement. After months of meetings and conference calls, the protocol that was presented to this Court for approval and signed by almost every party in the entire case provided

¹ In the unlikely event that the Bank Defendants believe that the non-duplicative documents produced after the completion of a deposition justify reopening that deposition, the Bank Defendants can seek to reopen the deposition pursuant to Paragraph IV(6) of the Deposition Protocol upon a showing of "extraordinary circumstances". Thus, the Bank Defendants' concerns can be remedied in a much less disruptive manner that keeps this case on its current schedule.

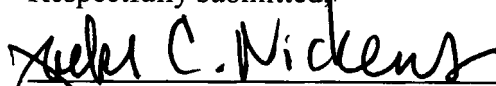
for five to seven depositions per day for eighteen months.

Lead Plaintiff's suggested alternative to the Banks' Motion would result in an untenable compression of an already aggressive schedule. To still provide for approximately 1200 deposition days, the number ultimately agreed to by the parties, the number of deposition tracks per day would have to be increased. Another option would be to limit the already carefully negotiated amount of time each party would have with any given witness. Given that the D&O Defendants only reluctantly accepted their current limited allocation of the deposition time, this option is also objectionable. Bank Defendants' request likely will lead to desperate requests for extensions of time at the end of the deposition period.

A compression of the current deposition schedule jeopardizes D&O Defendants' ability to fully, fairly and cost-effectively prepare for trial. The discovery deadlines in this case have been repeatedly pushed back; in fact, this Court's original scheduling order called for fact discovery to be completed over a year ago. If the Court grants the Bank's Motion, the first substantive deposition would not take place *until almost three years* after this case was filed.

Accordingly, the D&O Defendants respectfully request that the Court deny the Motion for Modification of the Scheduling Order and allow depositions to begin as scheduled on June 2, 2004.

Respectfully submitted,



Jack C. Nickens
State Bar No. 15013800
600 Travis, Suite 7500
Houston, Texas 77002
(713) 571-9191 (phone)
(713) 571-9652 (fax)

by permission


ATTORNEY IN CHARGE FOR
CERTAIN OFFICER DEFENDANTS

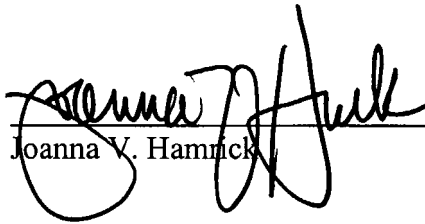
OF COUNSEL:

NICKENS, KEETON, LAWLESS,
FARRELL & FLACK, L.L.P.

Paul D. Flack
State Bar No. 00786930
Joanna V. Hamrick
State Bar No. 03003200
600 Travis, Suite 7500
Houston, Texas 77002
(713) 571-9191
(713) 571-9652 (fax)

CERTIFICATE OF SERVICE

The undersigned certifies that on this 26th day of May, 2004, a true and correct copy of the foregoing document was served on all counsel of record in the Enron Securities Litigation by posting said document in .PDF format to the <http://www.es13624.com> website.


Joanna V. Hamrick